

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Calling Party Pays Service Option,
in the Commercial Mobile Radio Services

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WT Docket No. 97-207

REPLY COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

VANGUARD CELLULAR SYSTEMS, INC.

Raymond G. Bender, Jr.
J.G. Harrington
Laura S. Roecklein

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2000

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SUMMARY

Vanguard supports wholeheartedly the Commission's initiative in the Calling Party Pays NOI and urges the Commission to work towards implementing national rules to make CPP a reality. The availability of CPP will serve the public interest by offering consumers lower prices and more choice in the telecommunications marketplace. The CPP service option advances local exchange competition by increasing the number of calls to cellular subscribers and increasing overall use of the network. The positive impact of CPP on phone usage can be seen in the empirical evidence from foreign countries that have successfully implemented CPP, which provides useful insight into the benefits of the CPP service option. Because of the significant benefits of CPP, the Commission should adopt a notice of proposed rulemaking in this proceeding promptly.

Uniform rules must be adopted before CPP can be made widely available. While inconsistent state and local regulations will serve to hinder, if not eliminate, the availability of CPP on a national basis, a nationwide policy for CPP will allow wireless carriers to offer CPP without having to undertake state regulatory proceedings across the country, and will promote widespread consumer recognition of CPP. Thus, the Commission should use its authority under the Communications Act to adopt a nationwide CPP regime.

As part of its uniform policy, the Commission must implement an adequate billing and collection mechanism for CPP. As the comments show, billing and collection is vital to the development of CPP. Unless non-discriminatory billing and collection is available from LECs, CMRS providers will be unable to get paid for CPP services, and thus will be unable to offer the

CPP service option. Moreover efficient billing and collection mechanisms are not available from sources other than ILECs.

The Commission also should implement a nationwide notification policy, such as an initial branding message, that ensures that callers are aware that they will be charged for the completed CPP call. The caller notification message should explain that charges will apply and that the caller has a choice of whether or not to complete the call. Because it is impossible for CMRS providers to inform callers of the exact charges associated with a CPP call, the Commission should *not* require that CMRS providers notify callers of the charges associated with each call.

Section 332 vests the Commission with ample authority to implement a national regulatory framework for CPP, including a national set of billing standards. The states were divested of jurisdiction over rates and entry regulation by section 332, and thus may not attempt to regulate CPP. Allowing any state regulation of CPP also would create unsolvable problems given the nature of CMRS licensing and coverage areas, and the multiple jurisdictional components of CMRS traffic. Thus, if CPP is to become widely available in the United States, the Commission must focus its efforts on the *minimum* regulatory regime necessary to facilitate the provision of CPP. While there are many issues that may affect CPP, most of these issues are best addressed in other proceedings, by industry fora or by individual companies. Thus, the Commission should address only the core CPP issues, including those described in these reply comments, in the notice of proposed rulemaking in this proceeding.

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REPLY COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard") by its attorneys, hereby submits its reply comments in the above-referenced proceeding.^{1/} As evidenced by the comments filed in response to the NOI, it is important for commercial mobile radio service ("CMRS") providers to be able to offer calling party pays ("CPP") services to their subscribers. The Commission should work steadfastly to adopt rules in this proceeding to make CPP service widely available under uniform standards.

I. INTRODUCTION

On October 23, 1997, the Commission initiated a NOI seeking information regarding the CPP service option currently offered by some CMRS providers. The Commission is examining the issues surrounding CPP to determine whether wider availability of CPP will enable CMRS providers to compete more readily with local exchange carrier ("LEC") services. Many parties, including Vanguard, filed comments in response to the Commission's inquiry. Vanguard's comments, as well as those of many other parties showed that the availability of CPP will offer

^{1/} In the Matter of Calling Party Pays Service Option in the Commercial Mobile Radio Services, *Notice of Inquiry*, WT Docket No. 97-207, FCC 97-341 (rel. October 23, 1997) (the "NOI").

consumers lower prices and more choice in the telecommunications marketplace. Vanguard offers these reply comments in further support of the Commission's initiative to pursue CPP as a CMRS service option.

II. THE COMMISSION SHOULD ISSUE AN NPRM IN THIS PROCEEDING TO ADOPT CPP SERVICE RULES

The basic question raised by the NOI is whether the Commission should move towards the adoption of CPP rules. As shown below, the record demonstrates that the Commission should do so by proposing rules to make CPP a reality. The comments show not only that the availability of CPP will serve the public interest, but that CPP will not become widely available unless the Commission adopts uniform rules. Thus, the Commission should work steadfastly towards rules that will allow CMRS providers to implement CPP as a service option on a national basis.

A. Nationwide Availability of the Calling Party Pays Service Option Will Meet the Needs of the CMRS Industry and Consumers.

The comments demonstrate that CPP has the potential to revolutionize the competitive development of the CMRS industry.^{2/} Indeed, as Motorola explains, "a national policy framework promoting the availability of a . . . [CPP] service option is critical to meeting the goals of the Communications Act."^{3/}

^{2/} See CTIA Comments at 2.

^{3/} See Motorola Comments at 3; Omnipoint Comments at 19 (suggesting that CPP is critical in today's environment because it enables CMRS carriers, particularly new entrants, to offer potential customers a differentiated service option that ultimately results in greater competition in the broad marketplace for telecommunications services).

The benefits associated with CPP demonstrate why it is important to CMRS providers and consumers alike. Most important, CPP offers consumers lower prices and more choice in the telecommunications marketplace. In addition, CPP offers consumers more predictability and control over their bills by permitting them to control directly what they spend for both incoming and outgoing communications.^{4/} Wireless customers no longer will have to pay for the calls they may receive and over which they have no control. Eliminating the costs for incoming calls will encourage wireless subscribers to circulate their numbers more freely, increase the amount of traffic in both the wireless and wireline networks, and encourage new subscribers.^{5/} CPP encourages subscribers to distribute their mobile phones numbers more widely, increasing overall usage and subscribership because it will place the costs of CMRS calls on the parties that make them, not just on CMRS subscribers.^{6/}

The positive impact of CPP on phone usage can be seen in the foreign countries that have successfully implemented CPP. As several parties agree, the international CPP model provides

^{4/} AirTouch Comments at 5; Nokia Comments at 3.

^{5/} See Sprint PCS Comments at 4 (noting that CPP will allow carriers to expand their service options for consumers and respond to consumer demand for greater control over costs while substantially expanding consumer choice by allowing subscribers to choose CPP-based or non-CPP-based calling plans); Motorola Comments at 2-7 (noting that the widespread implementation of CPP would increase wireless network usage significantly and make consumers more likely to view wireless phones as substitutes for landline offerings. In addition, the implementation of the CPP will help change consumer perceptions that wireless phones are for "emergency use only," and broader availability of CPP will serve the public interest by making wireless offerings more responsive to the needs of consumers by expanding the range of available service option).

^{6/} AT&T Wireless Comments at 2.

useful insight into the benefits of the CPP service option. Indeed, based on the international experience, it is evident that the availability of CPP does, in fact, stimulate demand, results in more balanced traffic flows and makes CMRS more competitive with landline services.^{7/} As AirTouch explains, the "European experience provides useful evidence of the potential of CPP. In Europe, CPP has been the norm since the introduction of mobile telephony. Europe also enjoys more balanced traffic flows between networks."^{8/} This empirical data demonstrating that CPP increases the demand for and use of wireless services is a useful indicator of the actual benefits experienced from CPP implementation and should be considered in the Commission's examination of CPP here in the United States.

This extensive experience with CPP in other nations also is consistent with the limited experience in the U.S. While BellSouth suggests that its domestic experience with CPP reflects

^{7/} While some parties suggest that differences between domestic and international market structures might alter the same positive market effect of CPP here in the U.S., those parties offer no substantive reason why the international experience is not a useful benchmark. *See, e.g.,* BellSouth Comments at 6-7; PageNet Comments at 6-7. Rather, the international data is the only reliable indicator of the effects of CPP on the cellular industry.

^{8/} AirTouch Comments at 9; *see also* Nokia Comments at 2-3 (noting that it has been Nokia's experience abroad that CPP increases the demand for and the use of wireless services, and is a major factor in the increase of wireless use in Europe and other areas of the world.); Omnipoint Comments at 20 (noting that current demand for CMRS is hindered by subscribers' unwillingness to either keep their wireless phones turned on or to distribute their wireless phone numbers. In Omnipoint's New York/New Jersey area, for example, between 70% and 80% of callers are mobile-originated, while its European cellular systems run about 55% mobile-to-land and 45% land-to-mobile calls.); Sprint PCS Comments at 2-3 (noting that the European experience with CPP shows that CPP greatly enhances the ability of subscribers to utilize wireless services in the same manner as they use wireline services, and that CPP leads to more balanced traffic flows, and suggests that CPP has great potential to increase competition among wireless and wireline systems.).

a lack of consumer interest and a lack of economic value,^{9/} other providers have achieved far better results. AirTouch, for instance, presents evidence from its Cincinnati market, showing that the CPP service option has been elected by approximately 50% of its local subscriber base.^{10/} Similarly, AT&T Wireless states that its market trials of CPP in Idaho and Arizona have "shown promising results."^{11/}

B. Without National, Uniform Rules, CPP Implementation Cannot Happen.

Given the benefits of CPP, it is apparent that there must be artificial barriers limiting its availability. In fact, those barriers have been identified in the comments and must be removed before CPP can succeed in the U.S. Indeed, as most commenters that support CPP explain, CPP cannot be implemented on a national scale without certain uniform rules.^{12/} Thus, "[t]o foster availability of a CPP service option, it is essential that the Commission enunciate a national policy finding that CPP is in the public interest and announcing that barriers to efficient introduction of CPP service are inconsistent with this national policy."^{13/}

^{9/} BellSouth Comments at 3.

^{10/} AirTouch Comments at 6.

^{11/} AT&T Wireless Comments at 2.

^{12/} See, e.g., Sprint PCS Comments at 17-18; USCC Comments at 6; U S West Comments at 2; and WUTC Comments at 6; Motorola Comments at 7; Beeples Comments at 3-4; CTIA Comments at 12.

^{13/} Motorola Comments at 7. Similarly, as CTIA noted, the Commission "has a significant federal interest in ensuring the uniform, rapid development of CPP, free of redundant and burdensome State and local obligations." CTIA Comments at 3.

Random, inconsistent state and local regulations will serve to hinder, if not eliminate, the availability of CPP on a national basis. The Commission need not look any further than the record of this proceeding for evidence of that fact: while many CMRS providers support CPP, few have been able to offer it. In this context, a uniform regulatory policy offers the only solution for the successful implementation of CPP. Only a uniform, nationwide policy for CPP can avoid a panoply of inconsistent state regulations that will prevent widespread implementation and use.^{14/} Similarly, a uniform regulatory policy will allow wireless carriers to offer CPP without having to undertake lengthy and expensive state regulatory proceedings across the country. A uniform framework also will promote widespread consumer recognition of CPP as a valid method of payment for calls to wireless subscribers and will promote effective use of CPP by wireless carriers that are inherently multistate.^{15/}

^{14/} An example of how inconsistent state regulations can frustrate implementation can be seen in the E-911 cost recovery context. A number of states are currently in the process of implementing cost recovery mechanisms. While some states are requiring wireless providers to assess monthly E-911 fees against customers based on billing addresses, others, such as West Virginia, have mandated an E-911 billing mechanism based on the area codes of the wireless telephone numbers (a method which creates significant technical billing difficulties). When adjoining states adopt different methods for recovering all costs, carriers can be subject to double assessments for one customer if a customer is billed in one state but has a phone number from a different state. For example, if a customer's billing address is located in Ohio, and the customer purchases wireless service for the customer has employees located in West Virginia using West Virginia phone numbers, the wireless carrier will be required to pay E-911 fees in Ohio, based on the employees' corporate address, and will have to pay E-911 fees again in West Virginia, based on the area codes of the employees' phones. Similar, and even more intractable, concerns will arise if states are permitted to impose their own, varying requirements for CPP.

^{15/} Sprint PCS Comments at 17-18.

Despite evidence that CPP depends on the enforcement of basic regulatory standards, some commenters suggest that market forces alone should be left to govern CPP.^{16/} In reality, market forces will work only under the appropriate market conditions, *i.e.*, the appropriate regulatory environment.^{17/} As demonstrated by the successful implementation of CPP overseas, a uniform set of standards will allow market forces to act efficiently. Indeed, as shown below, only minimum regulation will be necessary for CPP to be successfully implemented.

III. THE COMMISSION SHOULD PROPOSE TO ADOPT SPECIFIC, LIMITED RULES TO GOVERN CPP

While it is evident that a uniform set of regulations is necessary for the successful implementation and use of the CPP service option, the Commission need not – and should not – attempt to adopt wide-ranging extensive regulation. Rather, the Commission should exercise its jurisdiction to focus on the minimum necessary set of rules, including a national billing and collection regime and national consumer protection rules.

A. The Implementation of CPP Depends on a National Billing and Collection Regime.

Billing and collection is critical to the successful development and implementation of CPP in the United States.^{18/} Unless billing and collection for CPP services is available from

^{16/} See, e.g., USTA Comments at 3-4; SBC Comments at 8; PageNet Comments at 4; BellSouth Comments at 2; GTE Comments at 12.

^{17/} Current economic thought recognizes that certain markets, including the telecommunications market, require basic regulatory standards to be in place if they are to operate efficiently.

^{18/} See AirTouch Comments at 17; Centennial Comments at 2; Omnipoint Comments at 7.

LECs on a non-discriminatory basis, CMRS providers will be unable to obtain revenue for the CPP services, and thus will be unable to offer the CPP service option. As Omnipoint explained “[f]or effective CPP deployment, the CMRS provider must be confident that it can bill the CMRS [c]harges to, and collect them from, the [c]alling [p]arty. Since the CMRS operator normally has no direct relationship with the [c]alling [p]arty, the LECs must be required to provide the CMRS carrier with billing and collection service to bill those LEC customers that are CPP [c]alling [p]arties.”^{19/}

As described in Vanguard’s initial comments, section 272(c)(1)’s non-discrimination provisions, in conjunction with sections 251’s requirement that local exchange carriers provide nondiscriminatory access to network elements on an unbundled basis, provide the Commission with ample authority to require LECs to provide billing and collection services for the provision of CPP by CMRS providers.^{20/} Section 272(c)(1) prohibits a BOC from discriminating in favor of its affiliates in the provision of goods, services, facilities, and information. Because the Commission has interpreted “goods, services, facilities and information” to include administrative support services such as billing and collections services, and because the Commission has also determined that the terms “services,” “facilities” and “information” should

^{19/} Omnipoint Comments at 7.

^{20/} See Vanguard Comments at 3 (citing 47 U.S.C. § 271(c)(1), 47 U.S.C. § 272(e)(2) and Implementation of the Non-Accounting Safeguards of sections 271 and 272 of the Communications Act of 1934, *Second Order on Reconsideration*, CC Docket No. 96-149, FCC 97-222 (rel. June 24, 1997)).

include the meaning of the terms in section 251(c) relating to unbundled network elements,^{21/} the Commission has the express authority to require ILECs generally and BOCs in particular to provide CMRS carriers with nondiscriminatory access to their billing and collection services.

In addition, given the inherently interstate nature of CMRS, the Commission can adopt national billing standards for CPP pursuant to its authority over interstate communications under Title I.^{22/} While the *Billing Detariffing Order* detariffed billing and collection services provided by LECs to IXC, "the Commission could not possibly have anticipated over twelve years ago the significance of LEC billing and collections to the survivability of such an essential CMRS service as CPP."^{23/} Critical to the Commission's decision not to exercise its ancillary jurisdiction in that proceeding was the fact that IXCs were completely capable of meeting their own billing needs.^{24/} That is not the case here.^{25/}

^{21/} See Vanguard Comments at 3-4 (citing Implementation of the Non-Accounting Safeguards of sections 271 and 272 of the Communications Act of 1934, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21905, 22007-08 (rel. Dec. 24, 1996)).

^{22/} See, e.g., *Detariffing of Billing and Collection Service*, 102 F.C.C. 2d 1150, 1169 (1986) ("*Billing Detariffing Order*") (noting that the Commission's Title I powers would allow regulation of exchange carrier provision of billing and collection services to interexchange carriers). See also AirTouch Comments at 18 n. 37.

^{23/} Omnipoint Comments at 12-13.

^{24/} *Billing Detariffing Order*, 102 F.C.C. 2d at 1170.

^{25/} SBC, in contradiction to the position recently espoused by Southwestern Bell Mobile, claims that section 332 of the 1996 Act does not provide the Commission with authority to establish requirements regarding CPP arrangements. Compare SBC Comments at 3 with Southwestern Bell Mobile Systems, Inc., *Petition for Declaratory Ruling Regarding the Just and Reasonable Nature of, and State Law Challenges to, Rates Charged by CMRS Providers when*

While some commenters suggest that billing and collection services are available from other sources, that is incorrect.^{26/} In practice, these “alternatives” are not viable economical solutions. As Vanguard showed in its comments, the complexity of CMRS billing, due in part to the mobility of the service and roaming, and the costs associated with wireless providers billing landline customers, make adoption of a uniform national billing mechanism the only viable solution. In addition, subjecting CMRS providers to individual negotiations with LECs for billing and collection services will prove painstakingly slow and economically infeasible.^{27/} Because the LECs have little incentive to voluntarily enter into a reasonably priced fee arrangement for billing and collection, the result will be either artificially high billing rates, excessive costs from independent billing, or unacceptable leakage problems.

Charging for Incoming Calls and Charging for Calls in Whole-Minute Increments, File No. 97-31, DA 97-2674 (Nov. 12, 1997). According to SBC, the determination of which end-user pays for a call “is indeed a billing and collection matter.” SBC Comments at 4. According to SBC, the Commission should view CPP as a billing option that a wireless carrier and a LEC may decide to pursue. SBC Comments at 7. This argument, however, fails to consider the Commission’s established precedent governing billing and collection services or that wireless providers have no truly practical alternatives to LEC billing of CPP calls.

^{26/} See AT&T Wireless Comments at 2-3 (suggesting that although the Commission seems to presume that implementation of CPP would require CMRS providers to reach an agreement with LECs, there may be other techniques to implement CPP or equivalent billing arrangements that do not require a direct relationship between LECs and CMRS providers); Bell Atlantic Comments at 9-10 (CMRS carriers can obtain the necessary billing information from LECs under tariffs or contracts).

^{27/} Indeed, nearly two years after passage of the Telecommunications Act of 1996 and eighteen months after its initial request to negotiate interconnection agreements, Vanguard still has yet to obtain new interconnection agreements with two of its interconnecting ILECs. Without a Commission mandate, billing and collection negotiations are likely to be even more arduous, with little assurance of success.

B. The Commission Should Adopt National Consumer Protection Rules.

Vanguard agrees with other commenters that the Commission should implement a nationwide notification policy that ensures that callers are aware that they will be charged for the completed CPP call.^{28/} Such caller notification should be the responsibility of the wireless provider and should include an initial branding message that will inform caller that charges will apply and that the caller has a choice of whether or not to complete the call.

Although some commenters suggested the use of dedicated numbering resources as a possible consumer notification measure, this method should not be adopted.^{29/} This approach would not provide sufficient information to notify callers that they are about to incur a charge nor is it sufficient to obligate callers to pay for such call.^{30/} Moreover, this method depletes valuable numbering resources. As Sprint explained, it is easy to foresee significant problems with the dedicated NXX concept, including the necessity for the wireless customer to change his or her number; the arrival of service provider local number portability, which will make it impossible for CMRS providers to retain a dedicated number supply; and the threat of number exhaustion.^{31/} Indeed, Sprint's own experience using dedicated NXX codes for CPP in Virginia illustrates the drawbacks associated with this method.^{32/}

^{28/} CTIA Comments at 7; PCIA Comments at 12-13; Motorola Comments at 17.

^{29/} See Omnipoint Comments at 3.

^{30/} See WUTC Comments at 2-4.

^{31/} Sprint Comments at 3-4.

^{32/} *Id.* at 5-6.

The Commission also should recognize, as described in Vanguard's comments, that it is *impossible* for CMRS providers to inform callers of the exact charges associated with a CPP call.^{33/} The Commission, therefore, should *not* require that CMRS providers inform callers of the costs associated with each call.^{34/}

C. The Commission Has Jurisdiction to Regulate CPP Under Section 332 and the States Do Not.

The Commission has the authority under section 332 to impose a national regulatory framework for CPP, including a national set of billing standards, and the states do not.^{35/} Even if the states did have some residual jurisdiction, CPP could not be implemented if CMRS providers were subject to varying state regulations: Allowing state regulations will create unsolvable problems given the nature of CMRS licensing and coverage areas, and the multiple jurisdictional components of CMRS traffic.

As CTIA notes, "CPP is appropriately characterized as a CMRS rate mechanism for which the FCC retains exclusive regulatory jurisdiction [pursuant to section 332(c)(3)(A)]."^{36/} In addition, "because state bans on particular CMRS service offerings, such as CPP, can operate

^{33/} Vanguard Comments at 10.

^{34/} See CTIA Comments at 9.

^{35/} See AT&T Wireless Comments at 6 (the Commission also has authority over CPP through its plenary authority over the rates for CMRS pursuant to section 332(c)(3)(A)); Motorola Comments at 8 (suggesting that the Commission has clear legal authority to establish a national policy for CPP under section 332 and section 2(b) of the Communications Act); Sprint PCS Comments at 16 (noting that section 332(c)(3)(A) establishes that the Commission and not the states has the authority to regulate CMRS service offerings.).

^{36/} CTIA Comments at 14.

with the same effect as full-scale bans on entry by restricting choices for consumers and hindering nationwide CMRS service plans," the Commission should clarify that states are preempted by section 332(c)(3)(A) from imposing bans or delays on the implementation of CPP.^{37/} PCIA also suggests that pursuant to "sections 332(c) and 201 and the Eighth Circuit's interpretation of these sections, the FCC has clear authority to set forth nationwide policies on commercial mobile radio services such as calling party pays."^{38/} Indeed, "this authority is part and parcel of the FCC's Section 332(c) mandate to 'establish a Federal regulatory framework to govern the offering of all commercial mobile services.'"^{39/} Thus, the plain language of section 332 divests states of jurisdiction over rates and entry regulation, and the states may not attempt to regulate CPP.^{40/}

^{37/} *Id.* at 15. Indeed, because state regulation would serve as an entry barrier, as described above, the Commission also could preempt such regulation under section 253. *See* Vanguard Comments at 16.

^{38/} PCIA Comments at 5.

^{39/} *Id.* at 7.

^{40/} As section 332(c)(3)(A) states:

Notwithstanding sections 2(b) and 221(b), no state or local governments shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. 47 U.S.C. § 332(c)(3)(A).

While section 332 gives the states limited authority over “other terms and conditions,” that phrase does not include rates and pricing elements.^{41/} This is evident both from basic textual analysis and from the legislative history. Indeed, the list of terms and conditions that fall within a state’s lawful regulatory authority included in the House Report for the 1993 Budget Act, which enacted the current provision of section 332, demonstrates that state-imposed CPP regulations on interstate wireless carriers do not fit within the scope of a state’s lawful regulatory authority.^{42/}

The Commission also has authority to implement CPP as an interconnection arrangement framework pursuant to section 332(c)(1)(B). As Sprint PCS explains, “most European countries have adopted an interconnection-based policy” for CPP.^{43/} CPP is a form of interconnection because it requires specific signaling arrangements to be implemented, much as Signaling System 7 or other interconnection arrangements require carriers to meet specific technical

^{41/} Motorola at 13 (arguing that CPP is not strictly a matter of customer billing that falls within the state’s authority to regulate other terms and conditions.).

^{42/} H.R. Rep. No. 111, 103rd Cong. 1st Sess. at 261(customer billing information and practices and billing disputes and other consumer protection matters; facilities siting issues; transfers of control; the bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis). The dictum in the *Arizona* decision, which predated the Eighth Circuit’s decision and found that CPP is an example of “other terms and conditions,” does not require a contrary finding. Sprint PCS Comments at 19. *See also* Motorola Comments at 14 (noting that the passing dictum in *Arizona* in no way represents a determination that CPP is wholly a billing option). The Eighth Circuit also has clarified the scope of the Commission’s authority is broader than it might have appeared at the time of the *Arizona* decision. *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n. 21 (8th Cir. 1997), *petitions for cert. on other grounds pending*.

^{43/} Sprint PCS Comments at 8.

specifications necessary for calls to be completed. Thus, pursuant to its authority under section 332(c)(1)(B) the Commission can establish national guidelines for expanding existing interconnection agreements to cover CPP.^{44/} “Such guidelines will prevent LECs from using their dominance in the telecommunications marketplace and power in interconnection negotiations to prevent wireless companies’ ability to offer CPP services.”^{45/}

The Commission’s broad regulatory power over CMRS matters and the displacement of state jurisdiction recently have been confirmed by the Eighth Circuit Court of Appeals.^{46/} While the Eighth Circuit’s review of the *Local Competition Order* vacated portions of the Commission’s broader interconnection initiatives, the court specifically recognized the special nature of the Commission’s jurisdiction over CMRS and confirmed the steps the Commission had taken in the *Local Competition Order* that reflected the unique jurisdictional nature of CMRS.

^{44/} *Id.* at 12; see also Source One Comments at 7-8 (concluding that because the states are preempted from entry and rate regulation over wireless services, and because the Commission has jurisdiction over LEC-CMRS interconnection issues under section 332 and affirmed in *Iowa Utils. Bd.*, the Commission should exercise jurisdiction and develop regulations governing the relationship between CMRS providers of CPP and the LECs); Motorola Comments at 12 (explaining that because of our multi-carrier, multi-network environment, it is essential for the Commission to exercise its jurisdiction of LEC-CMRS interconnection and develop a federal model that defines respective carriers’ interconnection obligations).

^{45/} Sprint PCS Comments at 9.

^{46/} *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997).

IV. THE COMMISSION SHOULD NOT ADDRESS ANY ADDITIONAL ISSUES IN ITS NOTICE OF PROPOSED RULEMAKING

If CPP is to become widely available in the United States, the Commission must focus its efforts on the *minimum* regulatory regime necessary to facilitate the provision of CPP. This is important because efforts to address peripheral issues will result in delay and unnecessary controversy without meaningfully affecting the availability of CPP once the rules are adopted. Thus, the Commission should address only the core issues, including those described in these reply comments, in the notice of proposed rulemaking in this proceeding.

Adopting the path of minimum necessary regulation is consistent with important regulatory principles. As a regulator, the Commission's goal should be to facilitate the operation of the marketplace. This goal necessitates adopting the minimum regulation necessary to foster consumer choice and the wide availability of competitive services. Congress recognized this principle when it adopted the Telecommunications Act of 1996, which in some cases adopted additional regulation necessary to permit competition to flourish but that also was intended to create a "pro-competitive, de-regulatory national policy framework[.]"^{47/} This is not a contradiction, but a recognition that the best regulation is the minimum regulation necessary to achieve an important goal.

For these reasons, the Commission should be wary of adopting rules that cover issues that are peripheral to CPP. While there are many issues that may affect CPP, most of these issues are best addressed in other proceedings, by industry fora or by individual companies. For

^{47/} H.R. Rep. No. 458, 104th Cong., 2d Sess. 1 (1996).

instance, while the pay telephone industry raises questions about pay telephone compensation for CPP, those questions are more appropriately asked in the context of the Commission's existing pay telephone compensation proceeding.^{48/} At the same time, pay telephone compensation for CPP calls also may require resolution of technical issues best addressed by the industry fora. In fact, the Commission's processes are ill-suited to addressing these issues.

The Commission should apply the same tests to determining whether any other issue should be considered in the CPP rulemaking. Only if an issue is central to permitting CPP to become widely available should it be included in the notice of proposed rulemaking. Other issues should be set aside for other proceedings or other fora, that are better suited to their consideration.

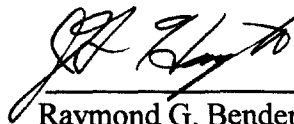
^{48/} Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128.

V. CONCLUSION.

For all of these reasons the Commission should issue an NPRM consistent with these comments.

Respectfully submitted,

VANGUARD CELLULAR SYSTEMS, INC.



Raymond G. Bender, Jr.
J.G. Harrington
Laura S. Roecklein

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802
(202) 776-2000

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Certificate of Service

I hereby certify that on this 16th day of January, 1998, I caused copies of Reply Comments of Vanguard Cellular Systems, Inc. to be served upon the parties listed below via hand delivery:

Magalie Roman Sales, Esq.
Secretary
1919 M Street, N.W.
Federal Communications Commission
Washington, DC 20554

Mr. William Kennard
Chairman
Federal Communications Commission
1919 M Street, NW
Room 814
Washington, DC 20554

Commissioner Harold W. Furchgott-Roth
Federal Communications Commission
1919 M Street, NW
Room 802
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, NW
Room 832
Washington, DC 20554

Commissioner Michael Powell
Federal Communications Commission
1919 M Street, NW
Room 844
Washington, DC 20554

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, NW
Room 826
Washington, DC 20554

Daniel B. Phythyon, Chief
Wireless Telecommunications Bureau
Policy Division
2025 M Street, N.W.
Room 5002
Washington, DC 20054

Pamela Megna
Wireless Telecommunications Bureau
Policy Division
2025 M Street, N.W.
Room 7336
Washington, DC 20054

Dr. Joseph A. Levin
Wireless Telecommunications Bureau
Policy Division
2025 M Street, N.W.
Room 7002-D
Washington, DC 20054

Kathleen Q. Abernathy
David A. Gross
AirTouch Communications, Inc.
118 N Street, Suite 00
Washington, DC 20036

Albert H. Kramer
Jacob S. Farber
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, DC 20037-1526

Cathleen A. Massey
Vice President - External Affairs
Douglas I. Brandon
Vice President - External Affairs
1150 Connecticut Avenue, N.W.
Suite 400
Washington, DC 20036

Howard J. Symons
Sara F. Seidman
Michelle M. Mundt
Mintz, Levin, Cohn, Ferris Glovsky and
Popeo
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, DC 20004

Victor L. Jackson
President
Beeples, Inc.
2377 Seminole Drive
Okemos, Michigan 4864

James U. Troup
Aimee M. Cook
Arter & Hadden LLP
1801 K Street, N.W., Suite 400K
Washington, DC 20006

James G. Pachulski
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

S. Mark Tuller
Bell Atlantic Mobile, Inc.
180 Washington Valley Road
Bedminster, New Jersey 07921

Andre J. Lachance
1850 M Street, N.W.
Suite 1200
Washington DC 20036

Richard Wolf
Director, Regulatory Affairs
Illuminet, Inc.
4501 Intelco Loop
P. O. Box 2902
Olympia WA 98507

Mary E. Brooner
Assistant Director, Telecommunications
Strategy and Regulation
Corporate Government Relations Office
Motorola, Inc.
1350 I Street, N.W.
Suite 400
Washington DC 20005

John A. Malloy
William B. Plummer
Nokia Telecommunications, Inc.
1850 K Street, N.W.
Suite 1175
Washington DC 20006

Lawrence R. Sidman
Leo R. Fitzsimon
Verner, Liipfert, Bernhard,
McPherson & Hand, Chartered
901 15th Street, N.W.
Suite 700
Washington DC 20005

Mark J. O'Connor
Piper & Marbury, L.L.P.
1200 19th Street, N.W.
7th Floor
Washington DC 20036

Judith St. Ledger-Roty
Wendy I. Kirchick
Kelley, Drye & Warren LLP
1200 - 19th Street, N.W., Suite 500
Washington DC 20036

Mark J. Golden
Senior Vice President, Industry Affairs
Personal Communications Industry
Association
500 Montgomery Street
Suite 700
Alexandria VA 22314-1561

Robert L. Hoggarth
Senior Vice President
Paging & Narrowband
Personal Communications Industry
Association
500 Montgomery Street
Suite 700
Alexandria VA 22314-1561

Caressa D. Bennet
Dorothy E. Cukier
Bennet and Bennet, PLLC
1019 19th Street, N.W.
Suite 500
Washington DC 20036

Robert M. Lynch
Durward D. Dupre
SBC Communications, Inc.
One Bell Center
Room 3524
St. Louis MO 63101

Nancy C. Woolf
Jeffrey B. Thomas
140 New Montgomery Street
Room 1529
San Francisco CA 94105

Jay C. Keithley
Sprint Corporation
1850 M Street, N.W.
11th Floor
Washington DC 20036-5807

Sandra K. Williams
P. O. Box 11315
Kansas City MO 64112

Jonathan M. Chambers
Roger C. Sherman
Sprint Spectrum, L.P.
1801 K Street, N.W.
Suite M-112
Washington DC 20006

Kurt A. Wimmer
Robert A. Long
Niranjan Arasaratnam
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington DC 20044

Linda L. Oliver
Hogan & Hartson, L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington DC 20004-1109

Peter M. Connolly
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington DC 20036

Mark McDermott
Linda Kent
Keith Townsend
Hance Haney
1401 H Street, N.W.
Suite 600
Washington DC 20005

Laurie J. Bennett
1020 19th Street, N.W.
Suite 700
Washington DC 20036